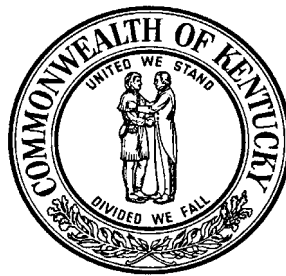


**REPORT OF THE AUDITOR OF PUBLIC ACCOUNTS
AGREED-UPON PROCEDURES ENGAGEMENT
OF THE
OLDHAM COUNTY FISCAL COURT**

**For The Period
July 1, 2004 Through May 16, 2005
Except as Noted**



**CRIT LUALLEN
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CRIT LUALLEN
AUDITOR OF PUBLIC ACCOUNTS

Members of the Oldham County Fiscal Court
The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
The Honorable John R. Fendley, Oldham County Attorney
Governor's Office for Local Development (GOLD)

Independent Accountant's Report

We have performed the procedures enumerated below, which were agreed to by the Oldham County Fiscal Court, per the attached resolution (Appendix A), solely to assist you with the accountability of financial management of the Oldham County Fiscal Court for the period July 1, 2004 through May 16, 2005, except as noted. This engagement to apply agreed-upon procedures was performed in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the Oldham County Fiscal Court. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The Fiscal Court's resolution and our procedures and findings are as follows:

1. Fiscal Court's Resolution - Investigate the reported absences from work of Director of Administrative Services, Chris Hovan from January-April 2005.

Procedures Performed - Reviewed the Oldham County's Administrative Code and related statutes and ordinances relating to payroll and personnel. Interviewed officials and other employees regarding payroll and personnel issues. Reviewed and recapped the time sheets of Chris Hovan for the pay periods from January-April 2005. Tested a sample of all payrolls to determine if payroll was properly handled, documented, and accounted for.

Finding - Oldham County's Administrative Code May Permit Employees To Be Paid For Hours Not Worked And Was Not Adhered To In All Aspects

The following is a recap of the timesheets submitted by Chris Hovan for the pay periods January thru April 2005.



Members of the Oldham County Fiscal Court
 The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
 The Honorable John R. Fendley, Oldham County Attorney
 Governor's Office for Local Development (GOLD)

Finding - Oldham County's Administrative Code May Permit Employees To Be Paid For Hours Not Worked And Was Not Adhered To In All Aspects (Continued)

Pay Period	Pay Date	Regular	Comp	Vacation	Holiday	Sick	Total Hours	
12/29/04-1/11/05	1/14/2005	41			15	19	75.0	Paid for 75 Hours
1/12/05-1/25/05	1/28/2005	30		26.5	7.5	11	75.0	Paid for 75 Hours
1/26/05-2/8/05	2/11/2005	45		22.5		7.5	75.0	Paid for 75 Hours
2/9/05-2/22/05	2/25/2005	37.5			7.5	30	75.0	Paid for 75 Hours
2/23/05-3/8/05	3/11/2005	45		22.5		7.5	75.0	Paid for 75 Hours
3/9/05-3/21/05	3/25/2005	62		13			75.0	Paid for 75 Hours
3/23/05-4/5/05	4/8/2005	47.5	18	5.5	4		75.0	Paid for 75 Hours
4/6/05-4/19/05	4/22/2005	47.5	22				69.5	Paid for 75 Hours
4/20/05-5/3/05	5/6/2005	70					70.0	Paid for 64.5 Hour
		<u>425.5</u>	<u>40.0</u>	<u>90.0</u>	<u>34.0</u>	<u>75.0</u>	<u>664.5</u>	

Per the Oldham County's Administrative Code - Human Resources Manual, the Director of Administrative Services (Director of Human Resources) position is an exempt position. The definition of an exempt employee is as follows:

- Exempt - professional, higher-level administrative, supervisory and managerial occupations. Employees in this category shall be exempt from FLSA and are not restricted to the exact hours of work. Pay is for proficiency rather than hours.

Per Appendix A of the Human Resource Manual, there are 18 exempt positions out of the 58 position titles available.

Below are policies from the Administrative Code that pertain to exempt employees

Compensatory Time:

An employee classified as exempt shall be granted compensatory time on a hour-for-hour basis for work in excess of the assigned workweek, with no more than 40 hours being allowed to be carried over from one calendar quarter to the next.

Based on this policy the most compensatory time Chris Hovan could start 2005 with was 40 hours and per our review of Chris Hovan's timesheets and payroll records she used 40 hours of compensatory time.

Vacation Time:

An employee with 2 years of service is entitled to two (2) weeks (75 hours) of vacation leave for the calendar year and would not be able to carry over any vacation leave to the following year until after five (5) years of continuous service.

Based on our review of Chris Hovan's timesheets and payroll records, she used 90 hours of vacation time, which is 15 hours over the amount to which she was entitled.

Members of the Oldham County Fiscal Court
The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
The Honorable John R. Fendley, Oldham County Attorney
Governor's Office for Local Development (GOLD)

Finding - Oldham County's Administrative Code May Permit Employees To Be Paid For Hours Not Worked And Was Not Adhered To In All Aspects (Continued)

Sick Leave:

Employees shall be entitled to one full sick leave credit with pay each month with no limit on accumulation. Per Chris Hovan's pay records she had a sick leave balance at January 2005 of 186 hours, which was adequate to cover the 75 hours of sick leave she had taken off.

Docking of Pay – Exempt employees:

Employees who are exempt from overtime shall not be docked for periods of absence from work of less than one full workweek except: 1) When the dock occurs during the first or last week of employment; 2) An employee misses an entire week of work; 3) An employee is absent for one or more days for personal reasons other than sickness or accident; or 4) the employee is suspended for an infraction of a safety rule of major significance. Per Chris Hovan's pay records her pay was docked 10.5 hours on the May 6, 2005, pay date (5.5 hours for the April 6-April 19 pay period and 5.0 hours for the April 20-May 3 pay period).

Conclusion:

The Oldham County Fiscal Court has adopted an Administrative Code which may allow an "exempt" employee to work less than a full week, be compensated for a full week, and not be required to use any leave time.

The Auditor of Public Accounts strongly recommends that any employee who works less than a full workweek be required to use leave time or be placed on leave without pay. No public employee should be paid for time not actually worked unless accumulated leave time is charged.

We recommend the Oldham County Fiscal Court review and revise the Administrative Code as needed as to the definition of an "exempt employee", the classifications currently designated as exempt, and the expectations of an exempt employee, in order for an exempt employee to be held accountable for the time actually worked.

Also, as stated above, Chris Hovan used 90 hours of vacation time, which is 15 hours over the 75 hours to which she was entitled. We recommend the 15 hours be docked from the next pay period, or have Ms. Hovan reimburse the Fiscal Court for the additional leave time used, and in the future pay closer attention to hours worked and hours off in order to determine when an employee's pay is to be docked.

Vacation Time

[illegible]

The FLSA allows an exempt employee to take off partial days with pay (no dock is allowed) if the leave banks are at zero. And, the County's Administrative Code also allows this. To avoid any hint of impropriety, Ms. Hovan had her pay docked for all hours not worked, partial or full days. Ms. Hovan charged off full vacation days even on days she worked some hours.

The Administrative Code is currently under review.

Members of the Oldham County Fiscal Court
 The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
 The Honorable John R. Fendley, Oldham County Attorney
 Governor's Office for Local Development (GOLD)

2. Fiscal Court Resolution - Investigate the late payment and attendant fees and fines relating to accounts payable, including the late payment of withheld employee taxes.

Procedures Performed - Reviewed Oldham County's procedures, and statutes and ordinances relating to the purchasing of goods and services. Interviewed officials and other employees regarding payables and late fees. Tested a sample of all expenditures to determine compliance with legal requirements and established procedures. Reviewed vendor files for noted late payments.

Finding - The Oldham County Fiscal Court Has Paid Or Incurred At Least \$5,672 In Late Fees, Penalties, And Interest Charges

- a) During our testing of expenditures we found 33 invoices, for the period July 1, 2004 thru May 16, 2005, where the Oldham County Fiscal Court incurred and paid late fees and interest charges, due to not paying bills in a timely manner in accordance with contractual requirements. The total amount of late fees and interest charged on these invoices was \$347 and the breakdown of these late fees and interest charges is shown below.

Schedule of Late Fees and Interest Charges		
Department	Late Fee Paid	
<u>Bell South (19 Invoices)</u>		
Animal Control	\$ 35.63	
Sheriff's Office	51.40	
Solid Waste/Recycling	33.37	
Parks and Recreation	25.58	
Courthouse	38.34	
Other County Properties	21.32	
Annex Building	31.81	
Total Bell South		\$ 237.45
<u>Oldham County Water District (3 Invoices)</u>		
Animal Control	3.40	
Road	9.26	
Total Oldham County Water District		12.66
<u>Verizon Wireless (7 Invoices)</u>		
Coroner	32.10	
Total Verizon Wireless		32.10
<u>National City Bank (4 Invoices)</u>		
County Police	36.63	
County Judges Office	28.13	
Total National City Bank		64.76
Total Late Fees and Interest Paid		<u>\$ 346.97</u>

Members of the Oldham County Fiscal Court
 The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
 The Honorable John R. Fendley, Oldham County Attorney
 Governor's Office for Local Development (GOLD)

Finding - The Oldham County Fiscal Court Has Paid Or Incurred At Least \$5,672 In Late Fees, Penalties, And Interest Charges (Continued)

- b) During our testing of payroll we found the following penalties paid by the Oldham County Fiscal Court to the Internal Revenue Service (IRS) for failure to make tax deposits by the dates required.

941 Tax Deposits				
Amount Due	Date Due	Payment Date	Days Late	Penalty Paid
\$ 52,569	2/6/2003	2/6/2003	1	\$ 1,051
51,616	4/14/2004	4/15/2004	1	1,032
777	6/30/2004	7/28/2004	28	78
53,992	12/8/2004	12/10/2004	2	1,080
343	12/8/2004	12/22/2004	14	17
Total Penalties Paid				<u>\$ 3,258</u>

- c) Also, during our testing of payroll, we discovered additional penalty and interest of \$2,067 has been assessed by the IRS for not filing W-2s and 1099s for the period ending December 31, 2002, in the format required by the IRS. Oldham County Fiscal Court is currently in the process of appealing this penalty and interest.

Conclusion:

The payment of interest and penalties is an unnecessary and inefficient use of taxpayer monies. We recommend the Oldham County Fiscal Court comply with contractual provisions and pay bills in a timely manner to avoid late fee and penalty charges, and implement procedures to ensure tax deposits are made timely to avoid interest and penalties in the future.

County Judge/Executive's and Chris Hovan's, Director of Human Resources Response:

Late Payments and Fees: \$3,605.00

Incurred for 2002 (previous administration): \$7,507.42

Late payments of payroll taxes are always cause for concern and an opportunity to learn. In December, when the most recent error occurred, we revisited the requirements, procedures and deadlines. We implemented changes in the use of automatic reminders and information sharing.

The proposed IRS penalty and interest (\$2,067.00) are for tax year 2002 (previous administration). We have responded as required, purchased the necessary software, and expect that this will be abated.

Members of the Oldham County Fiscal Court
The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
The Honorable John R. Fendley, Oldham County Attorney
Governor's Office for Local Development (GOLD)

Auditor's Reply:

We asked for and were provided notices from the IRS of all late fees and penalties paid by the fiscal court. These notices involved penalties and interest for late payment of payroll tax liabilities and reporting errors that applied to both the prior and the current administration as evidenced by the dates noted in our report.

County Judge/Executive's and Chris Hovan's, Director of Human Resources Response:

Late Payment of Invoices

We have made great improvements here since January, 2003! We wrote 191 checks to vendors from the General Fund in January, 2003. Covered by those checks were 134 past due invoices. We immediately began work on improving the process we used to handle invoices. With our increased processing speed, we have been able to take the prompt payment discounts offered by vendors. We've improved over the performance of the previous administration from 134 invoices in a month to less than 3 invoices per month. And, we continue to work to bring the number to zero.

We carefully review invoices that come in. The property insurance renewal for 2003-2004 had over 135 vehicles on the list. We performed an inventory, and cancelled insurance on 34 vehicles which the County no longer owned. With annual premiums of at least \$600/vehicle, more than \$20000 was saved by this administration.

There is correspondence between Ms. Hovan and Mr. Wyatt that shows that Ms. Hovan finds late fees unacceptable, that changes in process are required to meet payment deadlines, and that Mr. Wyatt knew that utilities invoices were pre-approved for immediate payment. Mr. Wyatt did find an appropriate way to speed the payment of credit card invoices. Yet, all but one period of the late fees on utility bills from Fiscal Court offices is attributable to Mr. Wyatt's oversight of payables. Given his expertise and training, Mr. Wyatt was notified that missed deadlines were unacceptable.

There is a special issue with credit cards. As anyone with credit cards knows, payment needs to be mailed out almost as soon as the invoice is received for a timely payment. We enter the receipt slips for approval, but purchases made between the fiscal court meeting and the close date of the credit card cycle will not be approved until after the due date of the bill. Thus, we incur finance charges. We have eliminated over 15 credit card accounts.

Members of the Oldham County Fiscal Court
The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
The Honorable John R. Fendley, Oldham County Attorney
Governor's Office for Local Development (GOLD)

3. Fiscal Court Resolution - Investigate inadequate training of financial services personnel.

Procedures Performed - Reviewed the County's Administrative Code for training requirements. Interviewed officials and personnel as to amount and quality of training and the need for any additional training.

Finding - Job Specific Training Of Financial Services Personnel Should Be More Formalized

The Oldham County Administrative Code states, in part:

Training shall include the following at a minimum: 1) Orientation of new employees; 2) Position specific (the job position/title as appointed); 3) Safety training shall be departmental specific, as well as overall safety; and 4) Employee conduct training. Training may be accomplished on site or at organized training seminars provided by educational institutions, the State of Kentucky, federal government or other means. Attendance and participation in training arranged by the Court is mandatory and a condition of employment. The Court will make every effort to provide training at reasonable times and with the convenience of the employee in mind. Training expenses will be paid by the County, including travel, lodging, registration, and course materials. However, all course materials remain the property of the Fiscal Court to be maintained by the employee. Each employee shall sign certification that they have been given an opportunity to review the Court's personnel chapter of the administrative code and received orientation on his/her job.

Based on interviews with Oldham County personnel, it appears most training of new employees was limited to "on-the-job" training. Employees stated they did not have computer software manuals and no formal training (classroom training) on the financial accounting software used by the Fiscal Court in order for them to have the knowledge to become proficient with the computer system and their jobs. It was noted software manuals and other resources are available thru the software company's website for use by the employees. Per the review of the personnel files, it was noted that not all employees had the signed certification noting they reviewed the personnel chapter of the administrative code and received orientation on their job.

Conclusion:

We recommend the Oldham County Fiscal Court ensure all users of the financial accounting software are aware of how and where to obtain computer manuals on the program, and ensure all users are properly trained by attending available training on this program. The Oldham County Fiscal Court should review and revise the Administrative Code pertaining to training to include the types (General/Job Specific) and a required number of training hours yearly a specific position should obtain. The Oldham County Fiscal Court should contact the Governor's Office for Local Development (GOLD) for guidance on developing additional training programs for new and current employees, in order for the employees to become proficient in their respective jobs. Also, as required by the Administrative Code, the Fiscal Court should ensure all employees sign the certification that they have reviewed the personnel chapter and received the orientation on their jobs.

Members of the Oldham County Fiscal Court
The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
The Honorable John R. Fendley, Oldham County Attorney
Governor's Office for Local Development (GOLD)

County Judge/Executive's and Chris Hovan's, Director of Human Resources Response:

Training is always ongoing, on the job and from on-site software specialists. The action items pointed out in this report are not due to a lack of training.

GOLD may not be the office to provide assistance in training issues. A new finance officer and 2 new treasurers in the last 2 ½ years did not receive any job-specific training from State agencies. KACO only offers one hour of training on treasurer duties, nothing for finance officers. We do attend the annual budget meeting. We take advantage of their insurance, personnel and legal updates.

We will be providing new Employee Handbooks to all employees within the month. A new acknowledgement form has been written, and each employee will sign it for inclusion in his/her file.

4. Fiscal Court Resolution - Investigate other irregularities as may appear as a result of this investigation.

Procedures Performed - The following additional irregularities, non-compliances, and weaknesses were discovered through the review of the Administrative Code, Fiscal Court policies, interviews, and testing.

a) Finding - Time Sheets Were Not Maintained For All Pay Periods

When we asked to review the timesheets for Chris Hovan for 2004, only one (1) timesheet was found in the files for the whole period. Since January 2005, Ms. Hovan has prepared time sheets on a regular basis.

Conclusion:

We recommend the Fiscal Court require all employees to submit time sheets. We further recommend the Administrative Code clearly require all employees, other than elected officials, to prepare and submit time sheets.

County Judge/Executive's and Chris Hovan's, Director of Human Resources Response:

Time Sheets - We will soon move to an automated timekeeping system to eliminate this issue. All non-elected employees will be expected to use the automated system.

Members of the Oldham County Fiscal Court
The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
The Honorable John R. Fendley, Oldham County Attorney
Governor's Office for Local Development (GOLD)

b) Finding - Time Sheets Were Not Approved And Signed By Employee's Supervisor

During our testing of payroll, we discovered numerous time sheets that were not signed by the employee's supervisor, to indicate the time sheet had been reviewed and approved by the supervisor. The failure to review and approve all time sheets is a weakness in the internal control structure over payroll that is in place to help ensure all time sheets reflect accurately the time worked and time off of every employee.

Conclusion:

We recommend the Fiscal Court ensure all time sheets are reviewed, approved, and signed by the employee's supervisor.

County Judge/Executive's and Chris Hovan's, Director of Human Resources Response:

Time Sheets not Approved - We do not know the population you reviewed. Many departments use a summary sheet. The manager typically signs the summary sheet.

c) Finding - Invoices Were Not Stamped With Date Received And Were Not Effectively Cancelled To Prevent Duplicate Payment

During our testing of expenditures we discovered all invoices were not stamped with the date received, and all purchase orders and invoices were not cancelled with the dated paid and check number upon payment. Since KRS 65.140 states bills for goods and services shall be paid within 30 days, stamping the date received on all invoices will facilitate the Fiscal Court in determining if bills are paid within 30 days of receipt. The canceling of invoices upon payment helps to prevent the duplicate payment of an invoice.

Conclusion:

In order to strengthen the controls over expenditures, we recommend all invoices be stamped with the date received and all purchase orders and invoices be stamped with the payment date and check number.

County Judge/Executive's and Chris Hovan's, Director of Human Resources Response:

Invoices Date Stamped/Cancelled - We have begun date stamping invoices. When invoices are paid, a copy of the check is stapled to the invoices making up the check amount. The accounting system does not allow the use of a duplicate invoice number.

Members of the Oldham County Fiscal Court
The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
The Honorable John R. Fendley, Oldham County Attorney
Governor's Office for Local Development (GOLD)

d) Finding - Related Party Transactions

During our review, we were informed of, and examined, the following two related party transactions. In the first transaction, in 1999, Hunt Tractor, Inc. submitted a bid for a county loader/backhoe procurement, and in November 1999, the company was awarded the contract for the purchase of the loader/backhoe for the county road department, in the amount of \$38,832. At the time, County Magistrate Paula Gish's husband was, and still is, a salaried/commissioned sales representative for Hunt Tractor, Inc. The minutes of the November 2, 1999 meeting of the Oldham County Fiscal Court record that Magistrate Gish abstained from voting on the motion to award this procurement contract to Hunt Tractor, Inc.

In the second transaction, involving a separate, later procurement for an additional backhoe, the superintendent of the county road department, in a memorandum dated November 4, 2003, stated that he contacted Hunt Tractor, Inc., and spoke with Magistrate Gish's husband. The superintendent asked Magistrate Gish's husband if he would help the superintendent write the bid specifications for the 2003 backhoe procurement, which Magistrate Gish's husband did. Hunt Tractor, Inc., later submitted a bid for the backhoe procurement. Bids for this backhoe procurement were opened on September 16, 2003. The bid of Hunt Tractor, Inc. was not selected, and the company was not awarded the contract for the purchase of the backhoe.

Conclusion:

We were advised that this matter has previously been referred to the Oldham County Ethics Commission and the Oldham County Attorney.

In reviewing this matter we have carefully reviewed KRS 61.210, KRS 61.220, and OAG 92-39 (See Attachment - Appendix B).

We recommend the Oldham County Fiscal Court amend the county Administrative Code relating to procurement to prohibit a representative or employee of a bidding entity to assist a county official or employee in the writing and preparation of bid specifications for county procurements.

County Judge/Executive's and Chris Hovan's, Director of Human Resources Response:

None Given

Members of the Oldham County Fiscal Court
The Honorable Mary Ellen Kinser, Oldham County Judge/Executive
The Honorable John R. Fendley, Oldham County Attorney
Governor's Office for Local Development (GOLD)

We were not engaged to, and did not, perform an examination, the objective of which would be the expression of an opinion on the accountability of financial management of the Oldham County Fiscal Court. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the Oldham County Fiscal Court and is not intended to be and should not be used by anyone other than these specified parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Crit Luallen", with a long horizontal flourish extending to the right.

Crit Luallen
Auditor of Public Accounts

Engagement fieldwork completed -
May 16, 2005

Resolution For Investigation Of Financial Affairs

Oldham County Fiscal Court

Oldham County Fiscal Court

May 3, 2005

Resolution For Investigation of Financial Affairs

Whereas: The Magistrates of Oldham County Fiscal Court have received a communication from ~~XXXXXX~~ Accounting Manager Jeffrey Wyatt charging various infractions regarding financial management of Oldham County affairs; and

Whereas: These charges are consistent with other reports Magistrates have received from employees and former employees; and

Whereas: Fiscal Court has an obligation to take seriously such charges and satisfy itself regarding proper financial management of County business;

Now Therefore, It is hereby resolved that:

Oldham County Fiscal Court orders an independent investigation of its financial operations conducted by the office of the State Auditor, with all expenses to be borne by Oldham County Fiscal Court, and with special attention to the following:

- The reported absences from work of Director of Administrative Services Chris Hovan from January-April, 2005;
- The late payment and attendant fees and fines relating to accounts payable, including the late payment of withheld employee taxes;
- Inadequate training of financial services personnel;
- Other irregularities as may appear as a result of this investigation.

Fiscal Court further instructs the County Judge/Executive to protect the security and integrity of all records and data which may be involved in this investigation.

KRS 61.210, KRS 61.220 and OAG 92-39

61.210 Justices, county judges/executive, county attorneys, and mayors or council members of consolidated local government not to be interested in public improvements -- Penalty.

- (1) No justice of the peace, while he is a member of the fiscal court, shall, directly or indirectly:
 - (a) Become interested in or receive benefits or emoluments from any contract let by the fiscal court of his county with relation to the building of roads or any internal improvements;
 - (b) Work or supervise work, for compensation, on any public road, bridge, culvert, fill, quarry pit, or any other road work or internal improvement under any contract made with the fiscal court; or
 - (c) Furnish, for compensation, any material to the county to be used in the construction of any road or bridge or other internal improvement.
- (2) No county judge/executive, county attorney, or mayor or council member of a consolidated local government shall, directly or indirectly, receive any benefits or emoluments from, furnish any material or other thing of value to be used in, or be interested in any contract let by the fiscal court or consolidated local government for, the construction of any roads, bridges, or parts thereof, or any other public or internal improvement.
- (3) Any officer who violates any of the provisions of this section shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) or imprisoned in the county jail not less than ten (10) nor more than forty (40) days, or both, and shall forfeit his office.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 346, sec. 14, effective July 15, 2002. --
Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat.
secs. 3766a-1 to 3766a-5.

61.220 Fiscal court members and mayors or council members of a consolidated local government not to be interested in public improvements or claims against county -- Penalty.

- (1) Any member of the fiscal court, or any mayor or council member of a consolidated local government, who becomes interested, directly or indirectly, in any contract for work to be done or material to be furnished for the county or any district thereof, or who becomes interested in any claim against the county shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each offense.
- (2) If any county judge/executive, justice of the peace, or mayor or council member of a consolidated local government is, by the same act, guilty of a violation of this section and KRS 61.210, he shall be punished as provided in KRS 61.210.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 346, sec. 15, effective July 15, 2002. -- Amended 1994 Ky. Acts ch. 321, sec. 1, effective July 15, 1994. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 1844.

OAG 92-39

March 11, 1992

Hon. Art Schmidt
State Senator, 11th District
Capitol Annex
Frankfort, Kentucky 40601

RE: Whether County Fiscal Court May Make Purchases From Entities Owned or Controlled by Individuals Having Certain Blood or Marriage Relationship to Fiscal Court Members. AGO Corr. No. 92-(O)-243.

Dear Senator Schmidt:

By letter of February 10, 1992, you ask whether a fiscal court may purchase goods or services from businesses owned or controlled by individuals who are (1) spouses; (2) children; (3) siblings; (4) parents; or (5) in-laws, of fiscal court member.

You cite §173 of Kentucky's Constitution as establishing a felony crime for officials, including county officials, to receive, directly or indirectly, profit from public funds spent or allocated by them. You also indicate that KRS 61.190 essentially restates the Constitutional prohibition.

There is no Kentucky statute specifically prohibiting a fiscal court from purchasing goods or services from firms owned or controlled by persons in one of the relationship categories asked about in your letter. Thus, unless a fiscal court member would benefit from or have a significant interest in a procurement of goods or services from a firm owned or controlled by one related by blood or marriage, subject to conditions discussed below, a fiscal court could procure goods or services from a firm owned or controlled by one who was a spouse, child, sibling, parent, or in-law, of a fiscal court member.

Several existing statutes ban fiscal court members from having an interest in governmental procurements. Depending upon the facts of a given case, a fiscal court member's blood or marriage relationship with one who owns or

controls a business which would provide goods or services to a county, may give a fiscal court member an interest in the firm's business with the county, effectively banning a fiscal court from dealing with such firm.

Aside from the statutory prohibitions, that might prevent a fiscal court's purchasing goods or services from a firm owned or controlled by one having a given blood or marriage relationship to a member of the court, is the common law ban on certain conflicts of interest. Discussion follows.

The membership of a fiscal court consists of magistrates, sometimes termed "justices of the peace," or where applicable, "commissioners," *and* the county judge/executive. Persons who hold these offices are recognized as being county officers.

There is no Kentucky statute expressly banning a fiscal court from purchasing goods or services from a spouse, child, sibling, parent, or in-law of a fiscal court member. Certain provisions of Kentucky law, however, may operate to impose such a ban, *if* a fiscal court member has a significant interest in a business owned or controlled by an individual related to a fiscal court member in one of the relationship categories you have mentioned, or in a procurement from such business.

§173 of the Constitution of Kentucky provides:

The receiving, directly or indirectly, by any officer of the Commonwealth, or of any county, city or town, or member or officer of the General Assembly, of any interest, profit or perquisites arising from the use or loan of public funds in his hands, or moneys to be raised through his agency for State, city, town, district, or county purposes shall be deemed a felony. Said offense shall be punished as may be prescribed by law, a part of which punishment shall be disqualification to hold office.

KRS 61.190, mentioned in your letter, provides:

Any public officer who shall receive, directly or indirectly, any interest, profits or perquisites arising from the use or loan of public funds in his hands, or to be raised through his agency, shall be punished by confinement in the penitentiary for not less than one (1) nor more than five (5) years. The judgment of conviction shall recite that the offender is disqualified to hold any public office thereafter.

While *not* mentioned in your letter, KRS 61.210, and KRS 61.220, must also be considered in relation to your questions.

KRS 61.210 provides:

- (1) No justice of the peace, while he is a member of the fiscal court, shall, directly or indirectly:
 - (a) Become interested in or receive benefits or emoluments from any contract let by the fiscal court of his county with relation to the building of roads or any internal improvements;
 - (b) Work or supervise work, for compensation, on any public road, bridge, culvert, fill, quarry pit or any other road work or internal improvement under any contract made with the fiscal court; or
 - (c) Furnish, for compensation, any material to the county to be used in the construction of any road or bridge or other internal improvement.
- (2) No county judge/executive or county attorney shall, directly or indirectly, receive any benefits or emoluments from, furnish any material or other thing of value to be used in, or be interested in any contract let by the fiscal court for, the construction of any roads, bridges or parts thereof, or any other public or internal improvement.
- (3) Any officer who violates any of the provisions of this section shall be fined not less than fifty (50) nor more than two hundred dollars (\$200) or imprisoned in the county jail not less than ten (10) nor more than forty (40) days, or both, and shall forfeit his office.

KRS 61.220 provides:

- (1) Any member of the fiscal court who becomes interested, directly or indirectly, in any contract for work to be done or material to be furnished for the county or any district thereof, or who becomes interested in any claim against the county or state shall be fined not less than five hundred (500) nor more than five thousand dollars (\$5,000) for each offense.

- (2) If any county judge/executive or justice is, by the same act, guilty of a violation of this section and KRS 61.210, he shall be punished as provided in KRS 61.210.

Evaluating the specific categories of relationships to fiscal court members you have asked about, against the provisions indicated above, we find as follows:

Where a *spouse* of a fiscal court member owns or controls a business from which the fiscal court would purchase goods or services, the fiscal court member *might* have a marital interest in economic benefits flowing to the spouse through the county's purchases. Accordingly, depending upon the specific facts involved, a fiscal court's purchase of goods or services from the *spouse* of a court member *might* place the member in violation of KRS 61.190, 61.210, or 61.220. See OAG 64-466, copy enclosed. Note however, that no Kentucky statute expressly bans a fiscal court's purchase of goods or services from a business owned or controlled by the spouse of a fiscal court member, and in recent years, a less stringent view has been taken regarding the interest of one spouse in the business activities of the other. Simply put, unless an interest is demonstrated on the part of a fiscal court member in a procurement awarded to an entity owned or controlled by the member's spouse, a violation of one of the provisions indicated above is not established. See letter of February 19, 1992, from Emerson (Attorney General's Office) to Williams, copy enclosed.

In the case of *children* of a fiscal court member, a fiscal court member does not have a recognized interest in a business owned or controlled by a child or children. *Unless* the facts of a given case demonstrate a significant interest on the part of a fiscal court member in the court's procurement of goods or services from a firm owned or controlled by a child of a fiscal court member, there would not be a violation of KRS 61.190, 61.210, or 61.220. See, for example, OAG's 76-253 and 81-360 (copies enclosed).

With respect to fiscal court's purchasing goods or services from a firm owned or controlled by *siblings, parents, or in-laws* of a fiscal court member, the rule would be the same as in the case of a child of a court member. Unless an interest within the meaning of KRS 61.190, 61.210, or 61.220 with such firm were shown, there would not be a violation of those provisions.

As noted, in addition to statutory considerations, the common law doctrine against conflicts of interest by those responsible for administering the business of others (e.g., the members of a fiscal court), might be brought to bear upon circumstances in which a conflict of interest exists because of a blood or marriage relationship with one who owns or controls a business, from which the

fiscal court seeks to procure goods or services. See for example, *Commonwealth v. Withers*, Ky., 98 S.W.2d 24 (1936).

Each case involving a possible violation of one of the specific statutory provisions referred to above must be evaluated in view of its specific facts. The views expressed above assume that all general purchasing requirements (e.g., KRS Chapter 45A or KRS 424.260) have been complied with, that a procurement is in the best interest of the county, that inside information is not involved, and that a procurement contract with a relative of a fiscal court member is not awarded to such individual because of such relationship. The views expressed in this letter are not intended to be, and should not be taken as, dispositive regarding the facts of a given case.

Sincerely,

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GRG:par

Enclosures

